

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

City of Bowie
15901 Excalibur Road
Bowie, Maryland 20716

Respondent.

**ADMINISTRATIVE ORDER
ON CONSENT**

Docket No. CWA-03-2017- 0084DN

I. STATUTORY AND REGULATORY BACKGROUND

1. EPA has made the following findings of fact and issues this Administrative Order on Consent (Consent Order) pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. Section 309 of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such section or requirement.

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act provides for the authorization of state programs to issue NPDES permits.

5. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.

6. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).

7. The term “municipal separate storm sewer system” (“MS4”) includes, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).

8. The term “small municipal separate storm sewer system” or “small MS4” means “all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . .; [and] (ii) Not defined as ‘large’ or ‘medium’ municipal separate storm sewer systems.” 40 C.F.R. § 122.26(b)(16).

9. Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder. Pursuant to 40 C.F.R. § 122.26(a)(9)(i), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

10. The City of Bowie, Maryland (“Bowie” or “Respondent”) is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

11. The City of Bowie is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

12. At all times relevant to this Order, Respondent has owned and/or operated a MS4 as that term is defined in 40 C.F.R. § 122.26(b)(8).

13. Respondent's MS4 is located within the City of Bowie, Maryland (the Bowie MS4), which is an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and requires an NPDES permit to discharge storm water pursuant to 40 C.F.R. §122.32(a)(1).

14. The City of Bowie encompasses a total area of approximately 18.51 square miles. According to the 2010 Census, its population is estimated at 57,727 people.

15. The Bowie MS4 is a "small MS4" within the meaning of 40 C.F.R. §122.26(b)(16).

16. Respondent's MS4 discharges stormwater to the Patuxent River, which runs to the Chesapeake Bay. The Patuxent River and Chesapeake Bay are "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

17. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment ("MDE") to issue NPDES permits on September 5, 1974, and to issue general NPDES permits in 1991.

18. MDE issued NPDES "General Permit for Discharges from Small Municipal Separate Storm Sewer Systems," General Discharge Permit No. 03-IM-5500; General NPDES Permit No. MDR 055500 (hereinafter, "the MS4 General Permit"), effective April 14, 2003.

19. The MS4 Permit was scheduled by its terms to expire on April 14, 2008 but has been administratively extended by MDE.

20. In order to be eligible for general permit coverage, a regulated MS4 had to submit a Notice of Intent (NOI) to MDE.

21. The City of Bowie submitted a NOI to MDE and obtained coverage under the MS4 General Permit on June 23, 2003.

22. On June 9 and 10, 2015, duly-authorized EPA representatives and their contractors conducted an inspection of Respondent's MS4 program ("the 2015 MS4 Inspection").

23. On October 1, 2015, EPA prepared a final Clean Water Act Compliance Inspection Report for the City of Bowie, Maryland (EPA's Inspection Report).

24. Bowie received a copy of EPA's Inspection Report. Bowie submitted its response to EPA's Inspection Report to EPA on October 23, 2015.

25. Based upon the 2015 MS4 Inspection, EPA representatives identified the following alleged violations of the MS4 General Permit and the CWA as described below.

Count 1: Failure to Submit Annual Stormwater Program Reports

26. Part V.C. of the MS4 General Permit ((Monitoring, Recordkeeping, Reporting And Program Review: Reporting) requires the permittee to submit an annual report to MDE which shall include, among other information, the permittee's compliance status with all permit conditions, an assessment of the appropriateness of the permittee's identified best management practices (BMPs), results of all collected stormwater information during the reporting period, and a summary of all the planned stormwater activities planned during the next annual reporting period.

27. At the time of the 2015 MS4 Inspection, Respondent had failed to submit any of the required annual stormwater program reports since 2004. Respondent represents that MDE excused annual reports for 2009 and 2010 based on expected MS4 permit reissuance,

28. EPA alleges that Respondent's failure to submit any of the required annual stormwater program reports in 2006 through 2008 and 2011 through 2015 is a violation of the MS4 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 2: Failure to Develop and Implement All Required Procedures for the Detection of Illicit Discharges

29. Part III. C. of the MS4 General Permit (Minimum Control Measures: Illicit Discharge Detection and Elimination) requires the permittee to develop, implement and maintain a program to identify and eliminate illicit storm drain system connections and non-stormwater discharges into the MS4. At a minimum, such a program shall include procedures to field screen storm drain outfalls on a consistent basis, inspection procedures for identifying the source of any suspected illicit discharges to the storm drain system, and enforcement and penalty procedures.

30. At the time of the 2015 MS4 Inspection, Bowie had not implemented and maintained all of the required procedures for illicit discharge detection and elimination. Bowie representatives stated that they performed annual inspections of stormwater ponds and performed inspections of all outfalls leading to streams every three years. Bowie represents that it had performed all the required inspections. However, Bowie did not have documentation of the triannual inspections of the outfalls, nor did it have written procedures concerning what actions were taken if the outfall inspections identified any illicit discharges. In addition, at the time of the 2015 MS4 inspection, EPA found that Bowie's map of all MS4 outfalls did not distinguish between City outfalls (which represented those outfalls included within the MS4) and privately owned outfalls, which would not be included as part of the City's MS4. The MS4 General Permit

did not explicitly require written procedures nor did it explicitly require the MS4 map to distinguish between City- owned and privately-owned outfalls.

31. EPA alleges that Respondent's failure to have written procedures concerning the action to be taken if illicit discharges are identified and to maintain a map that distinguishes between City-owned and privately-owned outfalls constituted a failure to implement and maintain an illicit discharge detection and elimination program with all the required components and is a violation of the MS4 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 3: Failure to Comply with All Pollution Prevention and Good Housekeeping Measures at All Municipal Operations

32. Part III.F. of the MS4 General Permit (Minimum Control Measures: Pollution Prevention and Good Housekeeping) requires the permittee to implement and maintain pollution prevention and good housekeeping techniques and procedures to reduce pollutants from all municipal operations. Components of this minimum control measure shall include municipal employee training materials to prevent and reduce pollutant discharges to the storm drain system, runoff controls geared toward fleet yard and building maintenance activities, and ensuring all municipally owned activities are properly permitted under NPDES or any other State or federal water pollution control program.

33. At the time of the 2015 MS4 Inspection, Bowie failed to have documentation of its techniques and procedures to reduce pollutants from municipal operations, and failed to have documentation of its employee training for pollution prevention and good housekeeping measures at municipal operations.

34. At the time of the 2015 MS4 Inspection, the EPA inspectors found that the two municipal facilities visited by EPA, the Public Works Facility and the Parks Maintenance Facility, were not permitted under Maryland's General Permit for Stormwater Discharges Associated with Industrial Activity (General Discharge Permit No. 12-SW). Both of these municipal facilities were being used for vehicle and equipment staging and maintenance as well as for storage and stockpiling of various materials.

35. At the time of the 2015 MS4 Inspection, EPA's inspectors observed violations of pollution prevention and good housekeeping measures at the two municipal facilities visited by EPA. At the Parks Maintenance Facility, the inspectors observed accumulated sediment near the opening of the curb outlet on the western side of the property as well as near curb cutout inlets for the bioretention facilities on the eastern side of the property, stormwater pooled at the outfall of the two bioretention facilities (with the outfall needing maintenance based on the fact that it was not draining properly), and that the facility's stormwater treatment devices were in need of maintenance. At the Public Works Facility, the inspectors observed a large amount of petroleum

staining at the staging area behind the Streets Division storage bays, (which was being used for storing vehicles and equipment), pooled water at the entrance to the street sweeping barn, migrated road sand beyond the cover of the storage barn, an unlabeled and uncovered bucket under one of the valves connected to a de-icing chemical tank, a catch basin on the south side of the facility which was clogged and in need of maintenance, and trash and debris in and around the stormwater management pond on the south side of the solid waste area.

36. EPA alleges that Respondent's failure to document its pollution prevention and employee training procedures and failure to maintain at all times pollution prevention and good housekeeping measures at its municipal operations is a violation of the MS4 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

III. ORDER

AND NOW, this _____ day of _____, 2017, pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the violations and any good faith efforts by Respondent to comply with section 301(a) of the Act, Respondent is hereby ORDERED, pursuant to Section 309(a) to do the following within the time frames specified below, unless otherwise stated:

37. Respondent shall take all actions necessary to comply with its MS4 Permit, including:

- a. Within thirty (30) days, provide current practices and procedures for illicit discharge detection and elimination in a written format and provide an updated copy of the City's current MDE-approved adopted ordinance and associated procedures.
- b. Within thirty (30) days, provide an updated MS4 map(s) showing the extent of the storm drain system, being sure to clearly identify all municipally owned outfalls. Include procedures for updating the map(s), and identifying the procedures concerning action to be taken if an illicit discharge is identified.
- c. Within sixty (60) days, provide documentation of employee trainings with regard to storm water pollution prevention and good housekeeping at the municipal facilities. Include a training summary or syllabus, an attendance list and the dates the training was provided, or submit a plan for a future storm water pollution prevention and good housekeeping trainings including the aforementioned elements.
- d. Within ninety (90) days, submit a Notice of Intent to MDE to retain coverage for the City's two municipal industrial operations and ensure compliance with all permit conditions including a SWPPP.

38. All documents required by Paragraph 37 of this Consent Order shall be accompanied by a certification signed by a responsible municipal officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed _____
Title _____

All required documents shall be submitted to:

Joy Gillespie
Enforcement Officer
NPDES Enforcement Branch
Mail Code (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

IV. GENERAL PROVISIONS

39. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Order, following its effective date (as defined below).

40. This Consent Order does not constitute a waiver or modification of the terms or conditions of the Respondent's MS4 permit. Compliance with the terms and conditions of this Consent Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

41. For the purposes of this proceeding, the Respondent neither admits nor denies the factual allegations and conclusions of law set forth in this Consent Order.

42. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.


43. By entering into this Consent Order, the Respondent does not admit any liability for the civil claims alleged herein.

V. EFFECTIVE DATE

This ORDER is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

Date: 2/28/17

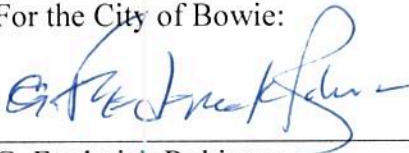


Dominique Lueckenhoff
Acting Director, Water Protection Division
U.S. EPA Region III

AGREED TO:

Date: 2/14/17

For the City of Bowie:



G. Frederick Robinson

Mayor, City of Bowie